



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF

SEP 27 2007

(AE-17J)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Richard A. Rausch, Environmental Manager
Dow Corning Corporation
Michigan Site Environmental Services
3901 S. Saginaw Road
Midland, Michigan 48640-5670

Re: In the Matter of Dow Corning
CAA Docket No. **CAA-05-2007-0034**

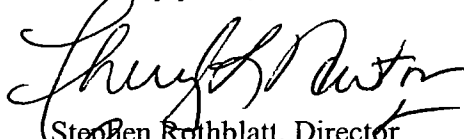
Dear Mr. Rausch:

I have enclosed a Complaint filed against Dow Corning, under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d). The Complaint alleges violations of Section 502 of the Clean Air Act, 42 U.S.C. § 7661a, and the Michigan State Implementation Plan.

As provided in the Complaint, if you would like to request a hearing, you must do so in your answer to the Complaint. Please note that if you do not file an answer with the Regional Hearing Clerk within 30 days of your receipt of this Complaint, a default order may be issued and the proposed civil penalty will become due 30 days later.

In addition, whether or not you request a hearing, you may request an informal settlement conference. If you wish to request a conference, or if you have any questions about this matter, please contact Sabrina Argentieri, Associate, Regional Counsel (C-14J), 77 West Jackson Boulevard, Chicago, Illinois 60604, at (312) 353-5485.

Sincerely yours,


Stephen Rothblatt, Director
Air and Radiation Division

Enclosures

cc: Thomas Hess, Enforcement Supervisor
Michigan Department of Environmental Quality – Air Quality Division

Gerald Avery, Field Operations Supervisor
Michigan Department of Environmental Quality – Air Quality Division

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. CAA-05-2007-0034
)	
Dow Corning Corporation)	Proceeding to Assess a Civil Penalty
Midland, Michigan)	Under Section 113(d) of the Clean Air
)	Act, 42 U.S.C. § 7413(d)
Respondent.)	
_____)	

Complaint

1. This is an administrative action to assess a civil penalty under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d).
2. The Complainant is, by lawful delegation, the Director of the Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5, Chicago, Illinois.
3. The Respondent is Dow Corning, a corporation doing business in Michigan.

Statutory and Regulatory Background

4. Section 502(a) of the Act, 42 U.S.C. § 7661a(a), states that, after the effective date of any permit program approved or promulgated under Title V of the Act, no source subject to Title V may operate except in compliance with a Title V permit.
5. EPA granted final interim approval to the Michigan Title V operating permit program on January 10, 1997. 62 Fed. Reg. 1387. The program became effective on February 10, 1997. The Michigan Title V program was granted final full approval by EPA, effective November 30, 2001. 66 Fed. Reg. 62949. See 40 C.F.R. Part 70, Appendix A.
6. The Michigan State Implementation Plan (SIP), R 336.1201, states, in part, that a person shall not install or construct any process, fuel burning or refuse burning equipment, or control equipment pertaining thereto, which may be a source of an air contaminant, until a permit

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is issued by the commission. R 336.1201(3) states that an application for a permit to install may be approved subject to any condition specified in writing that is reasonably necessary to assure compliance with these rules.

7. On May 6, 1980, R 336.1201 was approved by the EPA as part of the federally enforceable Michigan SIP and became effective on the same date. See 45 Fed. Reg. 29790.

8. The Michigan SIP, R 336.1702(a) states, in part, that a person who is responsible for any new source of volatile organic compound emissions shall not cause or allow the emission of VOC emissions from the new source in excess of the lowest maximum allowable emission rate listed by the commission on its own initiative or based upon the application of the best available control technology.

9. On November 7, 1994, R 336.1702(a) was approved by EPA as part of the federally enforceable Michigan SIP and became effective the same date. See 59 Fed. Reg. 46182.

10. The Michigan SIP, R 336.1910, states that any air-cleaning device shall be installed, maintained and operated in a satisfactory manner and in accordance with these rules and existing laws.

11. On May 31, 1972, EPA approved R 336.1910 as part of the federally enforceable Michigan SIP. See 37 Fed. Reg. 10842. On May 6, 1980, a revision to R 336.1910 was approved by the EPA and became federally effective. See 45 Fed. Reg. 29790.

12. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for volatile organic compound and/or particulate matter emission violations that occurred from January 31, 1997 through March 15, 2004, and may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred after March 15, 2004, pursuant to Section 113(d)(1) of the

Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

13. The Administrator may assess a penalty greater than \$220,000 or \$270,000 where the Administrator and the Attorney General of the United States jointly determine that a matter involving a larger penalty is appropriate for an administrative penalty action. 42 U.S.C. § 7413(d) (1) and 40 C.F.R. Part 19.

14. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

15. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this complaint.

General Allegations

16. Dow Corning operates and maintains, among other things, a silicone rubber manufacturing process and a methylvinylchlorosilane production process located at 3901 South Saginaw Road, Midland, Michigan.

17. Dow Corning's Midland facility is a major source of criteria air pollutants and therefore is subject to 40 C.F.R. Part 70, State Operating Permit Programs.

18. On May 8, 2002, the Michigan Department of Environmental Quality (MDEQ) issued a Renewable Operating Permit (ROP) Number 199600217 to Dow Corning pursuant to Michigan's Title V program.

19. On August 3, 2006, a Notice of Violation and Finding of Violation (NOV/FOV)

was issued to Dow Corning for violating its ROP, including applicable Michigan SIP requirements.

20. On October 12, 2006, a Section 113 Conference Meeting was held with Dow Corning to discuss the violations and any actions the company has taken to come into compliance with the alleged violations.

Count I

21. Complainant incorporates paragraphs 1 through 20 of this Complaint, as if set forth in this paragraph.

22. On October 9, October 30, and December 26, 2005, and on February 25 and May 30, 2006, Dow Corning exceeded the 40 degrees Fahrenheit exit gas temperature limit of the glycol condenser located in the silicon rubber manufacturing process (EG207-01).

23. This is a violation of Table E-1.3 EG207-01, Condition V.1 of the ROP; R 336.1702(a); and R 336.1201.

Count II

24. Complainant incorporates paragraphs 1 through 20 of this Complaint, as if set forth in this paragraph.

25. On June 30, August 16, August 27, and November 27, 2004; on September 1, - September 12, November 23, and December 9, 2005; and on April 25, April 30, May 8 and - February 10, 2006, Dow Corning exceeded the 65 degree Fahrenheit vent compressor condenser vapor outlet temperature limit from its silicone products manufacturing process (EG2504-01).

26. This is a violation of Table E-1.9 EG2504-01, Condition V of the ROP; R 336.1910; and R 336.1201.

Count III

27. Complainant incorporates paragraphs 1 through 20 of this Complaint, as if set forth in this paragraph.

28. From July 1 through December 15, 2006, and from January 1 through May 30, 2006, Dow Corning failed to maintain a 10 gallon per minute flowrate from its primary scrubber (scrubber no. 22452) in its methylvinylchlorosilane production (EG322-02).

29. This is a violation of Table F-1.12 EG322SCRUBBERS, Condition III.2, Condition V, and of Table E-1.31 EG322-02, Condition VI of the ROP.

Count IV

30. Complainant incorporates paragraphs 1 through 20 of this Complaint, as if set forth in this paragraph.

31. On January 11, June 15, July 22, and July 25, 2004, and on October 4, 2005, Dow Corning exceeded the -76 degrees Celsius limit from the exhaust gas of condenser #2044 (EG304).

32. This is a violation of Table F-1.3 FG304, Condition V of the ROP; R 336.1910; and R 336.1201.

Proposed Civil Penalty

33. Complainant proposes that the Administrator assess a civil penalty against Respondent for the violations alleged in this Complaint of \$159,109.

34. Complainant determined the proposed civil penalty according to the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e). Complainant evaluated the facts and circumstances of this case with specific reference to EPA's *Clean Air Act Stationary Source Civil Penalty Policy*, dated October 25, 1991 (penalty policy). Enclosed with this Complaint is a

copy of the penalty policy.

35. Complainant developed the proposed penalty based on the best information available to Complainant at this time. Complainant may adjust the proposed penalty if Respondent establishes *bona fide* issues of ability to pay or other defenses relevant to the penalty's appropriateness.

Rules Governing This Proceeding

36. The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/ Termination or Suspension of Permits* (the Consolidated Rules), at 40 C.F.R. Part 22, govern this proceeding to assess a civil penalty. Enclosed with the Complaint served on Respondent is a copy of the Consolidated Rules.

Filing and Service of Documents

37. Respondent must file with the EPA Regional Hearing Clerk the original and one copy of each document Respondent intends as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (E-13J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

38. Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Sabrina Argentieri to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Sabrina Argentieri at (312) 353-5485. Sabrina Argentieri's address is:

Sabrina Argentieri (C-14J)
Associate Regional Counsel
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Penalty Payment

39. Respondent may resolve this proceeding at any time by paying the proposed penalty by certified or cashier's check payable to "Treasurer, the United States of America", and by delivering the check to:

U.S. EPA, Region 5
P.O. Box 371531
Pittsburgh, PA 15251-7531

40. Respondent must include the case name, docket number and billing document number on the check and in the letter transmitting the check. Respondent simultaneously must send copies of the check and transmittal letter to the Regional Hearing Clerk and Sabrina Argentieri at the addresses given above, and to:

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Answer and Opportunity to Request a Hearing

41. If Respondent contests any material fact upon which the Complaint is based or the appropriateness of any penalty amount, or contends that it is entitled to judgment as a matter of law, Respondent may request a hearing before an Administrative Law Judge. To request a hearing, Respondent must file a written Answer within 30 days of receiving this Complaint and must include in that written Answer a request for a hearing. Any hearing will be conducted in

accordance with the Consolidated Rules.

42. In counting the 30-day period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day period expires on a Saturday, Sunday or federal legal holiday, the time period extends to the next business day.

43. To file an Answer, Respondent must file the original written Answer and one copy with the Regional Hearing Clerk at the address given above.

44. Respondent's written Answer must clearly and directly admit, deny, or explain each of the factual allegations in the Complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied. Respondent's failure to admit, deny, or explain any material factual allegation in the Complaint constitutes an admission of the allegation.

45. Respondent's Answer must also state:

- a. the circumstances or arguments which Respondent alleges constitute grounds of defense;
- b. the facts that Respondent disputes;
- c. the basis for opposing the proposed penalty; and
- d. whether Respondent requests a hearing.

46. If Respondent does not file a written Answer within 30 calendar days after receiving this Complaint, the Presiding Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules. Default by Respondent constitutes an admission of all factual allegations in the Complaint and a waiver of the right to contest the factual allegations. Respondent must pay any penalty assessed in a default order, without further proceedings, 30 days after the order becomes the final order of the Administrator of EPA under Section 22.27(c)

of the Consolidated Rules.

Settlement Conference

47. Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts alleged in the Complaint and to discuss a settlement. To request an informal settlement conference, Respondent may contact Sabrina Argentieri at the (312) 353-5485.

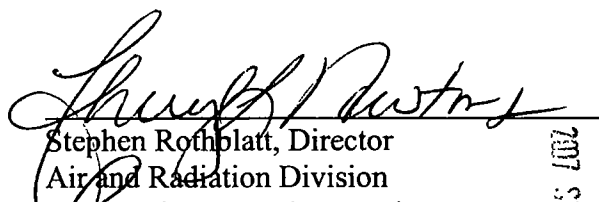
48. Respondent's request for an informal settlement conference does not extend the 30-day period for filing a written Answer to this Complaint. Respondent may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. Complainant encourages all parties facing civil penalties to pursue settlement through an informal conference. Complainant, however, will not reduce the penalty simply because the parties hold an informal settlement conference.

Continuing Obligation to Comply

49. Neither the assessment nor payment of a civil penalty will affect Respondent's continuing obligation to comply with the Act and any other applicable federal, state, or local law.

Date

9/27/07


Stephen Rothblatt, Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5

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In the Matter of:
Dow Corning
Docket No. CAA-05-2007-0034

CERTIFICATE OF SERVICE

I, Shanee Rucker, certify that I hand delivered the original and one copy of the Complaint, docket number _____ to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies of the Administrative Complaint, copies of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* at 40 C.F.R. Part 22, and copies of the penalty policy described in the Complaint by first-class, postage prepaid, certified mail, return receipt requested, to the Respondent and Rhonda L. Ross, Esq. by placing them in the custody of the United States Postal Service addressed as follows:

Richard A. Rausch, Environmental Manager
Dow Corning Corporation
Michigan Site Environmental Services
3901 S. Saginaw Road
Midland, Michigan 48640-5670

Rhonda L. Ross, Esq.
Warner Norcross & Judd LLP
2000 Town Center, Suite 2700
Southfield, Michigan 48075

on the 28th day of September, 2007.

Shanee Rucker

Shanee Rucker
AECAS [MI/WI]

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